IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc. No. 7799-M of 2006
Date of Decision:- 07.03.2007

Bhim Sen Dhand and another ....Petitioner(s)

through
Mr.Amit Rawal, Advocate.

vs.

State of Haryana and another ....Respondent(s)

through
Mr.R.D.Sharma, DAG, Haryana.
Mr. Sameer Sachdeva, Advocate
for respondent No.2.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

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SURYA KANT, J.

The prayer in this petition is for quashing of FIR No.476 dated 16.10.2005 under Sections 323, 506, 34 IPC registered at Police Station Sector 5, Panchkula and the consequential proceedings arising therefrom.

Petitioner No.2 is the son of petitioner No.1 who is stated to be 71 years old and has already lost his eyesight to the extent of 70%.

The impugned FIR has been registered on a compliant made by respondent No.2 who is a retired Additional Commissioner of Income Tax.

In order to appreciate the controversy it will be apposite to reproduce the impugned FIR, the relevant part of which reads as under:-

> "I, Amar Partap Kackria son of late Sh. Lachhman Dass Kackria, Resident of 509/7, Panchkula, aged 61 years state that I am residing at the above mentioned address

and now a retired Additional Commissioner of Income Tax. I have two sons. Vivek is the eldest and Vikrant is the youngest. Vivek is doing business and Vikrant is a practising Advocate in Panchkula District Court. My wife Indu Rani had bought one plot No.3922, Sector 32-A, Ludhiana measuring 400 yards from Bhim Sain Dhanda, Resident of Ludhiana. My wife Indu Rani expired on 30.9.1991 and this plot was transferred in the name of my both sons Vivek and Vikrant on 26.6.98. My sons sold the plot to Smt.Shahmati on 07.03.2005. My sons received the whole price through draft and had delivered the possession. On 4.10.2005 when I was at home then I received one call from Ganesh Dhanda son of Bhim Sain Dhanda, Resident of Ludhiana on my phone No.2597402 at 1 or 1.15 PM approximately, who told me that plot No.3922/Sector 32-A, Ludhiana, was earlier in their names which they had sold it and now the return the plot to us and we will give back the same price taken from your wife at the time of purchase and some money will also be given in addition to this. Then I replied that my sons had already sold this plot to some one. At this Ganesh said that he does not know to whom I had sold the plot, return the amount to that person and deliver the plot to him. Then I told him that I have no concern with you. Your father had sold the plot to my wife Indu Rani. At this Bhim Dhanda father of Ganesh

took the phone and stated that he cannot do anything. Now this is the age of the children and Ganesh wants ton construct a house over this plot. After this, Ganesh took the phone back and started threatening me. On this I told him that we cannot do anything as we have already sold the plot. Then Ganesh warned me telephonically that the knows how to take back the plot. We are Dhanda Transports, verify our names in Ludhiana. I told him that I cannot do anything regarding this plot. Then Ganesh warn me that if you can not do anything, then take care of yourself and your family. I will intimate you soon regarding this. My two daughters in law were at home at that time. I told this thing to my son Vivek and Vikrant in the evening of 4.10.2005 and we gave a thought. After this, Ganesh Dhanda made many calls from 4.10.2005 to 5.10.2005 and again warn me telephonically on 8.10.2005 and I have prepared the shrouds for my family and on this warning I cut off the phone. After this from 10.10.05 to 13.10.2005 I made many attempts to meet Superintendent of Police, Panchkula, but could only meet Superintendent of Police, Panchkula on 13.10.2005. After this SHO Police Station, Sector 5 was busy in the duty and other works at Mansa Devi Mela so I could not meet him. Today I have recorded my statement before you".

To counter the above reproduced allegations made against

them, the petitioners have come up with the plea that earlier both the families had cordial relations and at that time petitioner No.1 requested the respondent-complainant to arrange a loan of Rs.7 lacs and while arranging the same, the respondent-complainant had suggested the transfer of the plot in the name of his wife as a surety which was done by petitioner No.1 in good faith and then the plot was transferred in the name of wife of the respondent-complainant as a surety for the loan, however, the petitioner and his sons have misappropriated the said plot in a clandestine manner.

From the allegations and counter allegations, it is unequivocably clear that the root cause of the dispute is plot No.3992, Sector 32-A, Ludhiana measuring 400 sq.yards. Admittedly, the said plot has already been further sold by the respondent-claimant and his sons and sale proceeds thereof have been received and utilized by them.

In this backdrop, the Investigating Officer was directed to place on record the report under Section 173 Cr.P.C. which is alleged to have been presented before the Court concerned so as to find out the *prima facie,* incriminating material, if any, collected by the investigating agency against the petitioners and which could substantiate the allegations contained in the impugned FIR. It may be mentioned here that as per the allegations in the FIR, petitioner No.2 has been giving threats one after the other to the complainant on telephone only.

Strangely, the report under Section 173 Cr.P.C. is nothing but a mere replica of the FIR. There is not an iota of evidence collected by the Investigating agency to suggest even that the complainant had actually received any threatening call on his telephone from petitioner No.2. No records of the government controlled telephone Service Providers or of a

private agency have been procured by the Investigating Officer.

Except the bald statement of the complainant, there is no material or evidence available even to suspect the commission of alleged offence. It is a clear cut case of no evidence.

At the same time, it is also apparent that the actual dispute is of civil nature i.e. pertaining to proprietary rights of a residential plot in Ludhiana. It has also to be kept in view that petitioner No.1 as well as the complainant both are old persons. If the petitioners have any genuine claim over the said plot, their remedy lies before the Civil Court and not in hurling abuses or extending threats to the complainant. Similarly, the complainant cannot arm-twist and browbeat the petitioners so as to pre-empt them from initiating any legal action regarding the plot in dispute.

It is in this backdrop that petitioner No.2 was asked to file an additional affidavit which has been filed and is taken on record.

In the absence of any material even to *prima facie* substantiate the allegations made against the petitioners and the report under Section 173 Cr.P.C. being a mere repetition of the impugned FIR, there can be no escape but to hold that continuation of the impugned criminal proceedings is an exercise in futility and also an abuse of process of law. The same are accordingly quashed.

At the same time, it would not give a license to petitioner No.2 to extend threats to the complainant or his family in order to settle the scores which are primarily of civil nature.

Consequently, respondent-claimant shall always be at liberty to report the matter to the police authorities if he finds any genuine and truthful apprehension or threat to his life and liberty at the hands of the

petitioner No.2 or for that matter any other person.

With these directions and observations, this petition is disposed of .

March 07, 2007 **(SURYA KANT)**
poonam **JUDGE**